

Federal Health Insurance Reform under PPACA

Presented by Melinda Silver, Esq.
Melinda Silver Enterprises
Consultant, NM Office of Health Care Reform

Presentation Topics

- Brief History – How Did We Get Here?
- Review Of Federal Insurance Reforms under the Patient Protections and Affordable Care Act of 2010 (PPACA) And Their Effect On State Law.

Process – How Did We Get Here?

- Two-Minute History of Jurisdictional Issues in Health Insurance Law
- What Happened To Change This Structure in 2010

Early Federal Laws Affecting Health Insurance Regulation

1942 - WWII –Freeze on wages led to employer-offered benefits.

1945 - McCarren-Ferguson Act: states rights to regulate insurance.

1974 - Employee Income Security Act (ERISA).

Employee Retirement Income Security Act of 1974

- For an employer's health plan to qualify for tax benefits, the plan must follow ERISA law.
- For self-insured and multiemployer (union) plans, only ERISA law applies to these entities, enforced only by the U.S. Department of Labor. These plans are exempt from state insurance laws.
- If an employer does not self-insure, then the insurance coverage purchased by the employer is subject to state law - the NM Insurance Code.
- Church and state plans are exempt from both state and federal insurance laws.

Federal Patient Protection Laws Before PPACA

Note: If states do not pass laws with consumer protections at least as comprehensive as contained in these laws, consumers must look to federal govt. & fed. courts for enforcement.

1973 – Health Maintenance Organization (HMO) Act of 1973.

1996 – HIPAA – nondiscrimination & privacy laws;
Newborn and Mothers' Health Protection Act;
Mental Health Parity Act (MHPA).

1998 – Women's Health and Cancer Rights Act (WHCRA).

2008 – Genetic Nondiscrimination (GINA) and Mental Health Parity and Addiction Equity Act (MHPAEA).

PPACA – Employs a Similar Structure For Patient Protection

- Between 2010 and 2014, States must implement various reforms, or the state loses its ability to enforce insurance provisions.
- Some PPACA consumer protections are already in effect.
- In other cases, state law needs amending to effectively enforce the consumer protections in PPACA.

“Effective date” of PPACA Insurance Reforms

- Most 2010 reforms begin “for plan years beginning on or after the date that is six months after the date of enactment,” which was September 23, 2010.
- For many plans, effective date will not occur immediately (e.g. plan year may not began until January 2011).
- “Grandfathered” plans are exempt from most requirements.

Grandfathered Health Plans

- May make routine changes to their policies and maintain their status.
- Routine changes include: cost adjustments to keep pace with medical inflation, adding new benefits, modest adjustments to existing benefits, voluntarily adopting new consumer protections; changes in premiums.
- Loss of grandfathered status: significant changes that reduce benefits or increase costs to consumers – eliminate benefits, raise co-pays, co-insurance or deductibles; lower employer contribution, or change insurers.

PPACA: Insurance Reforms Effective 2010

New Mexico laws already include the following consumer protections found in PPACA:

- Temporary high-risk pool; eligible if individual has a pre-ex condition and 6-months non-coverage.
- Rescissions require fraud (includes grandfathered plans).
- Internal and external appeals - NAIC Uniform Health Carrier Model Act (#76-33) as floor.

PPACA: Insurance Reforms

Effective 2010 - *continued*

- For children under 19, prohibit exclusions for pre-existing conditions (includes grandfathered plans).
- Dependent coverage of adults up to age 26. If a grandfathered plan, not required when coverage is offered by the dependent's employer.
- Ban on lifetime limits (indiv/grp.) with regulated limits on annual coverage (includes grandfathered plans).

PPACA: Insurance Reforms

Effective 2010 - *continued*

- Preventive coverage regardless of deductibles.
- Rate review process and reporting.
- Qualified health plans to report claims and enrollment data to the Secretary of HHS, the DOI and the public.

Effective 2011:

- By March 22, 2011, HHS to develop uniform Explanation of Coverage Documents and Standardized Definitions.
- Minimum loss ratios – 85% in large group market, 80% in small group and individual market.

Effective 2013:

- By January 1, 2013, states must notify HHS if they intend to establish and operate a state-based Exchange.
- Co-ops to offer Qualified Health Plans.
- Simplification of administration, through phase-in of single set of operating rules for eligibility verification, claims status, and other procedures.

Effective 2014

- Gender and health status eliminated as rating factors.
- Guaranteed issue in individual and group market .
- Individual mandate to purchase, with affordability provisions.
- Essential health benefits package – will begin to affect State mandates, if states require additional mandates.
- Exchanges fully operational.

Mandate Review – Exclusion from PPACA?

- NM mandates coverage for HPV screening; **PPACA specifically does not.**
- [***Educated guess for exclusion:*** chiropractor services; doctors of oriental medicine; smoking cessation treatment; general anesthesia and hospitalization for dental surgery; prescription contraceptives; and certified midwives & registered lay midwives.]

Mandate Review: Inclusion in PPACA?

[Educated guess for inclusion, though perhaps not at the same levels of coverage as in state mandate:

Craniomandibular and temporomandibular joint disorders (TMJ); hearing aids for children and circumcision for newborns (*may be included in rules re: pediatric coverage under PPACA*); maternity transport; home health care option; mastectomies and lymph node removal – minimum hospital stays; diabetes coverage; alpha-fetoprotein IV screening test; childhood immunization; genetic inborn errors of metabolism; and autism spectrum disorder.]

Related Links:

New Mexico's Insurance Division website on SJM1 – health reform implementation.

<http://www.nmprc.state.nm.us/id.htm>

Printable timeline:

<http://www.kff.org/healthreform/upload/8060.pdf>

U.S. Federal Government – Comparison guides for insurance coverage.

<http://www.healthcare.gov/compare/index.html>

New Mexico's Office of Health Care Reform website.

<http://www.hsd.state.nm.us/nhcr/nhcrlao.htm>

* **Division of Insurance proposed rulemaking** - proposed rules must be published – the NM PRC publishes in the Albuquerque Journal. They also post proposed rulemaking on the PRC website.

<http://www.nmprc.state.nm.us/notices.htm?panel=0#examples>

Scroll down to Insurance – it is not in alphabetical order.